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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920

No. 925. 136

THE WESTERN PACIFIC RAILROAD COMPANY, APPELLANT,

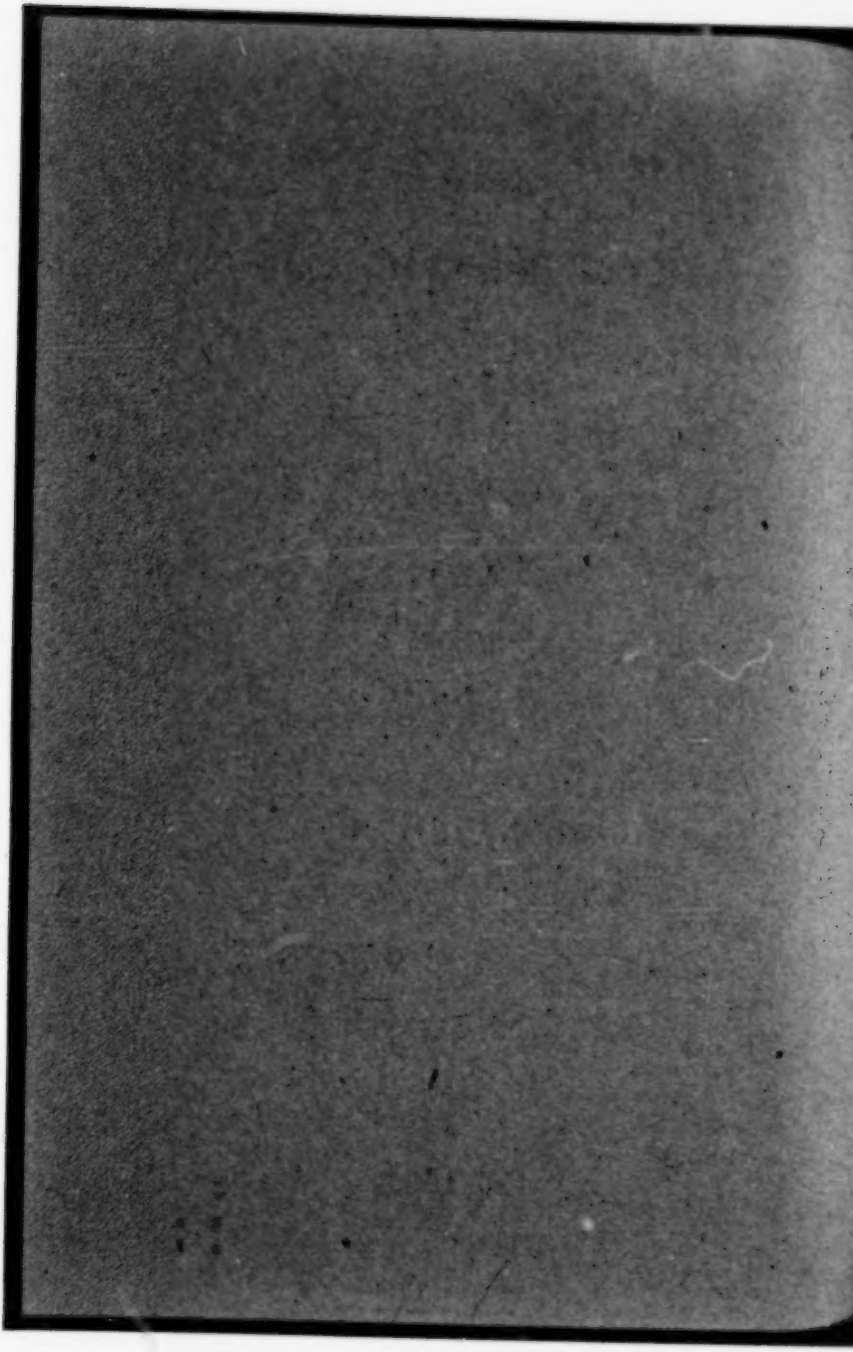
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 2, 1920.

(27,190)



(27,190)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 435.

THE WESTERN PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

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In the Court of Claims.

No. 33678.

THE WESTERN PACIFIC RAILROAD COMPANY

vs.

THE UNITED STATES.

I. *Petition and Amended Petition.*

On October 31, 1916, the claimant filed its original petition. Subsequently, to wit, on September 25, 1918, by leave of court, the claimant filed its amended petition which is as follows:

To the Honorable Chief Justice and Judges of the Court of Claims:

The amended petition of The Western Pacific Railroad Company respectfully represents:

I.

The petitioner, The Western Pacific Railroad Company, is a corporation duly organized and existing under the laws of the State of California, duly empowered to operate railways in the States of California, Nevada and Utah.

II.

In or about the year 1910 the Western Pacific Railway Company completed the construction of and thereafter operated a
2 system of Railways in the States of California, Nevada and Utah.

III.

Pursuant to a decree of the District Court of the United States for the Northern District of California, entered on May 27, 1916, in a certain cause there pending entitled Equity No. 169, The Equitable Trust Company of New York, as trustee, complainant, against the said Western Pacific Railway Company and others, and pursuant to a master's sale as therein directed and afterwards approved by the court, the petitioner, by deed of Francis Krull, Special Master, and others, dated July 1, 1916, acquired all of the railways, property, assets and choses in action belonging to the said Western Pacific Railway Company or to Frank G. Drum and Warren Olney, Jr., as receivers of the said Western Pacific Railway Company appointed in said cause and in a certain cause ancillary thereto pending in the District Court of the United States for the District of Utah, who, as such receivers, operated the railway properties of said Western Pacific

Railway Company during the period from March 3, 1915, in the one case, and March 6, 1915, in the other, until July 14, 1916, when the said receivers turned over to the petitioner the railways, property and assets of said Western Pacific Railway Company, since which time the petitioner has operated the said railways; and hereinafter in the paragraphs relating to transportation and settlements therefor, the term "claimant" is, for convenience, used to designate the said Western Pacific Railway Company, the said receivers, or the petitioner herein, as the case may be.

IV.

Under the acts by which lands were granted in aid of the construction of railroads and subsequent legislation of Congress, the rates for the transportation of government troops and property on land-grant railroads during the times hereinafter mentioned were fifty per centum of the rates for transportation of similar character for private account; but the provisions in the said acts granting lands in aid of the construction of railroads and reserving special privileges to the United States in respect of the use of such railroads, were limited to the transportation of property and troops of the United States.

V.

Heretofore and before the transactions hereinafter mentioned, railroad companies of the United States generally, including the said Western Pacific Railway Company, severally agreed with the Quartermaster General of the United States Army that they would each accept

"for the transportation of property moved by the Quartermaster Corps, United States Army, and for which the United States government is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement,"

which said agreements, known as "equalization agreements," are set out in Circular No. 23, Quartermaster General's Office, 1911, dated November 15, 1911, and Circular No. 6, Office of the Chief, Quartermaster Corps, 1913, dated March 1, 1913. By virtue of such agreements the rates for shipments covered thereby were fixed by the published tariff rates by way of the practicable route between the terminal points of the movement affording the largest proportion of land-grant mileage less proper land-grant deduction applicable to such land-grant mileage involved.

VI.

By Circular approved by the Secretary of the Treasury under date of October 29, 1917, and printed in 14 Decisions of the Comp-

troller of the Treasury, at pages 967 et seq., a form of bill of lading was prescribed for freight shipments by the United States, on the back of which appeared, among others, the following conditions and instructions:

"Conditions.

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of freight charges will in no case be demanded by carriers. Upon surrender of this bill of lading duly accomplished payment will be made to the last carrier, except where otherwise specifically stipulated.

2. For railway transportation this bill of lading is subject to all the conditions of the uniform or standard bills of lading, and for express shipments to all the conditions contained in the standard form of receipt issued by express companies, except as otherwise specifically provided hereon.

3. Shipments made upon this bill of lading shall take the rate provided for shipments made upon the uniform or standard bills of lading or standard receipts. * * *

"Instructions.

1. Government property will be transported on the prescribed form of Government Bill of Lading, which will be identified by serial numbers.

* * * * * * *

3. When shipments are made under contract or special rates, notation of such fact should appear on the face of the bill of lading.

4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the government by the use of such lines, or lines equalizing rates therewith.

* * * * * * *

7. Public property may be delivered by any Government officer or agent to the Quartermaster's Department of the Army, which will ship the same under its regulations. (23 Stat. 111.)

8. Only one copy of a bill of lading will be issued for a single shipment. This bill, when receipted by the agent of the receiving carrier, will be returned to the consignor and by him mailed to the consignee, who will, upon receipt of the shipment, accomplish and surrender the bill to the last carrier. This bill then becomes the evidence upon which settlement for the service will be made. * * *"

The said conditions being accepted by the railroad companies, the latter thereby waived their right either to payment of the freight charge before shipment or before delivery at destination, and after delivery of the shipment the freight charge became a claim against the United States the amount of which was fixed and determined by the published and standard rates for shipments made upon the uniform or standard bills of lading or standard receipts, subject only to proper deduction, if any, for land-grant mileage in accordance with the laws of the United States and said equalization agreements.

VII.

The said Circular of October 29, 1907, also prescribed forms of so-called "Public Voucher for Transportation of Freight," one for cases not involving land-grant mileage and one for cases involving land-grant mileage, the latter of which provided columns for entry of Class Symbol, Bill of Lading date and number, Initial
6 point of shipment and destination, Mileage, total and land-grant, Class or Commodity, Weight, Rate, Gross Amount, Amount to be deducted on account of land-grant, and Amount Claimed, and required the following certificate:

"I certify that the above account is correct and just; that the services have been rendered as stated; that payment therefor has not been received, and that the rates charged are not in excess of the lowest net rates available for the government, based on tariffs effective at the date of service.

_____,
(Name of Transportation Company).
Per _____,
(Name and Capacity.)"

And upon the back of the form of so-called voucher, appeared the following, among other, instructions:

"3. Payment for transportation of freight will be made to the last carrier, unless otherwise provided in the bill of lading, upon the voucher form accompanied by the corresponding accomplished bills of lading," etc.

As, however, the amount of the freight charge was, as aforesaid, fixed by published tariffs subject to proper land-grant deduction, if any, and the accomplished bills of lading were made the evidence upon which settlement was to be made, and such rates or charges so fixed were not subject to the direction or control of the accounting officers of the government or of the last carrier's auditors or agents certifying such so-called voucher, such vouchers were, and, as a matter of long-established custom and practice, were regarded by the government disbursing and accounting officers, as merely tentative and subject to revision or correction by such disbursing and accounting officers, whether such revision or correction involved increase or decrease in the amount stated in such so-called vouchers.

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VIII.

Under the regulations of the United States Army in force at the times hereinafter mentioned, each and every officer of the Army, when changing station, was entitled to the transportation, at the expense of the government, of a certain weight of household goods or other personal property belonging to him, such weight being graded by his rank; and army officers, when proceeding to or changing station, were entitled to transportation, at the expense of the government, of the number of private mounts (horses owned by them) for which they were entitled to forage according to their rank.

IX.

The Comptroller of the Treasury by decision of February 26, 1886 (2 Comp. Dec. 415), held generally that the United States was entitled to land-grant rates on such transportation as it might require of land-grant railroads. By decision of October 13, 1904 (11 Comp. Dec. 174), the Comptroller of the Treasury held that the certain fixed amount of effects of officers, known as change of station allowance, authorized to be transported by the government at its expense, became invested with a quasi-public character and, as such, the railroads were under obligation to transport it on the same terms as other government property, but that the railroads were entitled to full rates on weight of such effects in excess of the change of station allowance. And by decision of October 16, 1905 (12 Comp. Dec. 202), the Comptroller of the Treasury held that a regulation of a Secretary of a Department authorizing the transportation at public expense of certain articles or a certain quantity of personal belong-

8 ings, constituted those articles government property for the purpose of transportation, and that the same should be shipped as government property on government bill of lading and at government (land-grant) rates. Thereafter, upon request by the War Department for a ruling as to whether, in view of the act of Congress of March 3, 1910 (authorizing baggage in excess of the regulation change of station allowance to be shipped with such allowance and reimbursement for transportation charges on such excess to be collected from the officer), the Comptroller of the Treasury on December 20, 1910, rendered a decision (17 Comp. Dec. 428) wherein he held that by virtue of said act of March 3, 1910, excess baggage or effects, as well as the regulation change of station allowance, became invested with a quasi-public character and as such should be transported by carriers as other government property. But thereafter, under date of February 21, 1914, the Comptroller of the Treasury rendered a decision (20 Comp. Dec. 575) wherein, after reiterating his prior uniform rulings that transportation of an officer's baggage and effects, to the extent of the regulation change of station allowance, was subject to land-grant deduction, he held that any excess could not be regarded as government property and the railroads could not be required to transport it as such, but declared and di-

rected that said decision should not be applied to the readjustment of accounts theretofore adjusted in accordance with his decision of December 20, 1910, supra. Thereafter this court, on February 8, 1915, handed down its decision in the case of the Chicago, Milwaukee and St. Paul Railway Company vs. The United States, holding that an officer's baggage or effects are not property of the United States within the meaning of the railroad land-grant legislation and that the railroads are entitled to full commercial rates on such shipments. But thereafter, by decision of June 30, 1915 (21 Comp. Dec. 889), the Comptroller of the Treasury held, notwithstanding said
9 decision of this court, that the annual acts of Congress making appropriation for the transportation of the army and its supplies, limited the authority of the government accounting and disbursing officers, in settlements for the transportation of officers' baggage and effects within the regulation change of station allowances and involving land-grant mileage, to payment of the rate applicable to proper government transportation; and by a further decision of December 14, 1915 (22 Comp. Dec. 263), adhered to said decision of June 30, 1915.

X.

Between the 10th day of June, 1919, and the 18th day of March, 1915, the claimant, at the request of the United States as shipper or consignor, received from other railroad companies at connecting points, on government bills of lading, and transported over its lines aforesaid, effects and property of various officers of the United States army, as to all of which, had the same been property of the United States, land-grant deductions under the said equalization agreements would have been proper; but the said effects and property not being property of the United States, the claimant, as the last or delivering carrier, was entitled to payment for all of such transportation at the regular published tariff rates applicable, nevertheless the said decisions of the Comptroller of the Treasury, being binding upon the Executive branch of the government, precluded the claimant from securing from the government disbursing or accounting officers payment beyond the amounts payable under said decisions on account thereof.

XI.

The claimant's auditor or agent presented to the proper disbursing officer of the Quartermaster Corps of the United States
10 Army station at San Francisco, California, the accomplished bill of lading for the first of said shipments accompanied by a so-called voucher upon one of said government forms wherein the full published tariff rate or charge applicable was stated as the amount due, but the said decisions of the Comptroller of the Treasury theretofore rendered, being binding upon the Executive branch of the government and precluding the said disbursing officer from making payment for said transportation beyond the amount payable therefor under said decisions, such disbursing officer refused to make

payment of the full amount of said charge and required the making of a revised voucher showing land-grant deduction in accordance with said decisions, and thereupon, in order for the claimant to receive payment to the extent to which, under said decisions, the said disbursing officer could make settlement, and without in any wise waiving or releasing the government from liability for, or intending to waive or release the government from liability for, the full tariff rate or charge applicable to such shipment, the claimant's said auditor or agent (who was without authority or power to waive or release the government from liability for such full tariff rate and charge) prepared and delivered to said disbursing officer such a revised so-called voucher in form and content as directed by said disbursing officer, wherein was stated the net amount payable by such disbursing officer after deduction on account of land-grant mileage involved, as required by said decisions, and thereupon the claimant received from said disbursing officer payment of said net amount.

XII.

Thereafter as the accomplished bills of lading for such shipments were submitted to said disbursing officer and in order for the
11 claimant to receive payment to the extent to which under the said decisions of the Comptroller of the Treasury as rendered from time to time the said disbursing officer could make settlement, and without in any wise waiving or releasing the government from liability for, or intending to waive or release the government from liability for the full tariff rates and charges applicable to such shipments, the claimant's said auditor or agent (who was as aforesaid without authority or power to waive or release the government from liability for any part of such full tariff rates and charges), after conference with said disbursing officer in each instance, prepared and delivered to said disbursing officer such so-called vouchers in form and content as directed by said disbursing officer, wherein were stated the net amounts payable by such disbursing officer after deduction on account of land-grant mileage involved, as required by said decisions, and thereupon the claimant received payments of said net amounts. And the amounts so deducted and withheld on all of said shipments mentioned in paragraph X hereof, amounting in the aggregate to $5,760.89, still remain due and unpaid.

XIII.

Between the 18th day of March, 1915, and the 1st day of August, 1916, the claimant, at the request of the United States as shipper or consignor, received from other railroad companies at connecting points, on government bills of lading, and transported over its lines aforesaid, effects and property of various officers of the United States Army, as to all of which, had the same been property of the United States, land-grant deductions under the said equalization agreements would have been proper; but the said effects and property not being property of the United States, the claimant, as the last or delivering

carrier, was entitled to payment for all of such transportation
12 at the regular published tariff rates applicable, nevertheless the government disbursing and accounting officers allowed and issued warrants for net amounts after making land-grant deductions on account of land-grant mileage involved, although the claimant's auditor or agent, being then advised of the decision of this court in the case of the Chicago, Milwaukee and St. Paul Railway Company, submitted in each of such cases a so-called voucher wherein the full published tariff rate and charge was stated as the amount due and payable, and such warrants were by the claimant accepted under protest. And the amounts so deducted and withheld on all of said shipments mentioned in this paragraph, amounting in the aggregate to $851.78, still remain due and unpaid.

XIV.

By reason of all such withholding of amounts as land grant deductions, the said Western Pacific Railway Company, the said receivers thereof, and the petitioner herein were paid $6,612.67 less than they would have received had they been paid for all said transportation at the full published tariff rates and charges.

Wherefore, the petitioner, as successor in interest as aforesaid of the said Western Pacific Railway Company and the said receivers thereof, and in its own right, demands judgment of the United States in the sum of $6,612.67, no part thereof having been paid, and the right thereto of the said Western Pacific Railway Company and the said receivers thereof not having been assigned otherwise than by operation of the judicial proceedings aforesaid, and the right of the petitioner thereto not having been assigned.

THE WESTERN PACIFIC RAILROAD COMPANY,
By CLARK, PRENTISS & CLARK,
Its Attorneys.

13 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

J. F. Evans, being duly sworn, deposes and says that he is General Auditor of The Western Pacific Railroad Company, the petitioner in the foregoing and annexed petition; that he has read the said petition and that the matters stated therein are true to the best of his information and belief.

J. F. EVANS.

Subscribed and sworn to before me this third day of September, 1918.

[SEAL.] FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California.

II. *General Traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. *Argument and Submission of Case.*

On April 1, 1919, this case was submitted on merits by Mr. W. C. Prentiss, for the claimant, and Mr. H. C. Whitman, for the defendants, on arguments made this day by the same counsel in the case of Denver & Rio Grande R. R. Co., No. 33,301.

14 IV. *Findings of Fact (as Amended June 28, 1919) and Conclusion of Law, Entered May 5, 1919.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The plaintiff, The Western Pacific Railroad Company, is a corporation duly organized and existing under the laws of the State of California, duly empowered to operate railways in the States of California, Nevada, and Utah.

II.

In or about the year 1910 the Western Pacific Railway Company completed the construction of and thereafter operated a system of railways in the States of California, Nevada, and Utah.

III.

Pursuant to a decree of the District Court of the United States for the Northern District of California, entered on May 27, 1916, in a certain cause there pending, entitled Equity No. 169, The Equitable Trust Company of New York, as trustee, complainant, against the said Western Pacific Railway Company and others, and pursuant to a master's sale as therein directed and afterwards approved by the court, the petitioner, by deed of Francis Krull, special master, and others, dated July 1, 1916, acquired all of the railways, property, assets, and choses in action belonging to the said Western Pacific Railway Company or to Frank G. Drum and Warren Olney, jr., as receivers of the said Western Pacific Railway Company appointed in said cause, and in a certain cause ancillary thereto pending in the District Court of the United States for the District of Utah, who, as such receivers, operated the railway properties of said Western

Pacific Railway Company during the period from March 3, 1915, in the one case, and March 6, 1915, in the other, until July 14, 1916, when the said receivers turned over to the petitioner the railways, property, and assets of said Western Pacific Railway Company, since which time the petitioner has operated the said railways; and hereinafter in the paragraphs relating to transportation and settlements therefor the term "claimant" is, for convenience, used to designate the said Western Pacific Railway Company, the said receivers, or the petitioner herein, as the case may be.

15

IV.

Under the acts by which lands were granted in aid of the construction of railroads and subsequent legislation of Congress, the rates for the transportation of Government troops and property on land-grant railroads during the times hereinafter mentioned were fifty per centum of the rates for transportation of similar character for private accounts; but the provisions in the said acts granting lands in aid of the construction of railroads and reserving special privileges to the United States in respect of the use of such railroads, were limited to the transportation of property and troops of the United States.

V.

Heretofore and before the transactions hereinafter mentioned, railroad companies of the United States generally, including the said Western Pacific Railway Company, severally agreed with the Quartermaster General of the United States Army that they would each accept

"for the transportation of property moved by the Quartermaster Corps, United States Army, and for which the United States Government is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement."

which said agreements, known as "equalization agreements," are set out in Circular No. 23, Quartermaster General's Office, 1911 dated November 15, 1911, and Circular No. 6, Office of the Chief, Quartermaster Corps, 1913, dated March 1, 1913. By virtue of such agreements the rates for shipments covered thereby were fixed by the published tariff rates by way of the practicable route between the terminal points of the movement affording the largest proportion of land-grant mileage less proper land-grant deduction applicable to such land-grant mileage involved.

VI.

By circular approved by the Secretary of the Treasury under date of October 29, 1907, and printed in 14 Decisions of the Comptroller

of the Treasury, at pages 967 et seq., a form of bill of lading was prescribed for freight shipments by the United States, on the back of which appeared, among others, the following conditions and instructions:

16 "Conditions.

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of freight charges will in no case be demanded by carriers. Upon surrender of this bill of lading duly accomplished payment will be made to the last carrier, except where otherwise specifically stipulated.

"2. For railway transportation this bill of lading is subject to all the conditions of the uniform or standard bills of lading, and for express shipments to all the conditions contained in the standard form of receipt issued by express companies, except as otherwise specifically provided hereon.

"3. Shipments made upon this bill of lading shall take the rate provided for shipments made upon the uniform or standard bills of lading of standard receipts. * * *

"Instructions.

"1. Government property will be transported on the prescribed form of Government bill of lading which will be identified by serial numbers.

* * * * * * *

"3. When shipments are made under contract or special rates, notation of such fact should appear on the face of the bill of lading.

"4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the Government by the use of such lines, or lines equalizing rates therewith.

* * * * * * *

"7. Public property may be delivered by any Government officer or agent to the Quartermaster's Department of the Army, which will ship the same under its regulations. (23 Stat., 111.)

"8. Only one copy of a bill of lading will be issued for a single shipment. This bill, when receipted by the agent of the receiving carrier, will be returned to the consignor and by him mailed to the consignee, who will, upon receipt of the shipment, accomplish and surrender the bill to the last carrier. This bill then becomes the evidence upon which settlement for the service will be made. * * *"

VII.

The said circular of October 29, 1907, also prescribed forms of "Public voucher for transportation of freight," one for cases not involving land-grant mileage, and one for cases involving land-grant mileage, the latter of which provided columns for entry of class symbol, bill of lading date and number, initial point of shipment and destination, mileage, total and land-grant, class or commodity, weight, rate, gross amount, amount to be deducted
17 on account of land grant, and amount claimed, and required the following certificate:

"I certify that the above account is correct and just; that the services have been rendered as stated; that payment therefor has not been received; and that the rates charged are not in excess of the lowest net rates available for the Government, based on tariffs effective at the date of service.

——— ———,
"(Name of transportation company.)
"Per ——— ———,
(Name and capacity.)"

And upon the back of the form of so-called voucher appeared the following, among other, instructions:

"3. Payment for transportation of freight will be made to the last carrier, unless otherwise provided in the bill of lading, upon the voucher form accompanied by the corresponding accomplished bills of lading," etc.

VIII.

Under the regulations of the United States Army in force at the times hereinafter mentioned, each and every officer of the Army, when changing station, was entitled to the transportation, at the expense of the Government, of a certain weight of household goods or other personal property belonging to him, such weight being graded by his rank; and Army officers, when proceeding to or changing station, were entitled to transportation, at the expense of the Government, of the number of private mounts (horses owned by them) for which they were entitled to forage according to their rank. By the act of March 3, 1910, excess baggage was authorized to be shipped with the regulation allowance and reimbursement collected for transportation charges on such excess.

IX.

The Comptrollers of the Treasury, before there were any decisions touching upon the question and continuously during the whole period since the determination of proper rates to be paid land-aided roads for Government transportation had first been for consideration, had uniformly treated the transportation of Army officers' effects on change of station as subject to land-grant rates, and settle-

ment had always been made on that basis. Such property was treated by them as vested with a quasi public character. The first specific presentation of the question to the Comptroller as to the application of land-grant rates to officers' effects on change of station was in the Quincy Bridge case, under an act providing that no higher rate should be charged for transportation over the Quincy Bridge of the troops and munitions of war of the United States than the rate per mile paid for their transportation over the railroads leading to the bridge, but the question presented to and decided by the Comptroller in that case was as to the rate applicable over the bridge under that act, and no question was made in that case as to the application of land-grant rates to the shipment involved over the railroads leading to the bridge. In a case decided by the Comptroller in 1904 the question was presented as to the application of land-grant rates to the excess of officers' effects over the regulation allowance, as to which the railroad company contested the application of land-grant rates, and the Comptroller held that commercial rates should apply to such excess, but no question was made in that case as to the application of land-grant rates to the regulation allowance. In these and a number of other decisions of the Comptroller reference was made to the uniform holding that land-grant rates was applicable to the effects of Army officers changing station under orders and to the
18 established and long-continued practice to that effect, which was generally understood, but the applicability of such rates to such transportation had never been specifically questioned by any railroad company in any appeal to the Comptroller. No action was ever instituted in this court by any railroad company to recover commercial rates for such transportation until an action by the Chicago, Milwaukee & St. Paul Railroad Co., No. 32567, was commenced November 9, 1914, in which case the court on February 8, 1915, rendered judgment in favor of the plaintiff for the amount found to have been deducted by the accounting officers on account of land grant.

X.

During the whole of the period embraced in this suit settlements of charges for freight shipments in cases where the claimant was the last carrier, were made by the office of the depot quartermaster at San Francisco, California.

XI.

From the time the Western Pacific Railway Company commenced to haul freight, and continuing during the period embraced in this suit, settlements for charges on freight shipments on Government bills of lading were in charge of one David A. McLean, head of the freight revising bureau in the office of the general auditor of the plaintiff at San Francisco, California. Vouchers required by the Government system of accounting and settlement were signed by said general auditor.

Vouchers when paid constituted the officer's acquittance in the

settlement of his accounts. They were, therefore, only to be paid in the amount stated and claimed, interlineations or erasures were prohibited, and errors in a statement of a voucher were corrected by stating and certifying a new voucher. A disbursing quartermaster could not properly and without danger of disallowances in the settlement of his own accounts pay more than was authorized by decisions of the Comptroller.

XII.

Between the 10th of June, 1910, and the 18th day of March, 1915, the plaintiff, at the request of the United States, as shipper or consignor, received from other railroad companies at connecting points, on Government bills of lading, and transported over its lines aforesaid, effects and property of various officers of the United States Army, changing stations under orders.

XIII.

During this period it was the practice of said McLean to revise the bills of lading and apply the rates applicable on the traffic at commercial rates, make the land-grant deduction and compute the freight charges at the net rate. After a month's bills of lading had been revised it was his practice to check up with the quartermaster's office and adjust differences, where there were any differences,
19 as to the correct charges. He then caused the claims to be stated on the prescribed voucher form and after being signed they, with the bills of lading attached, were forwarded to the quartermaster for payment. It appears that to the best recollection of said McLean he stated the first of these claims, during this period, at commercial rates, but being informed by the quartermaster's office of the applicability of land-grant rates under the holding of the Comptroller and the established practice he restated the claim on a land-grant basis. It further appears that he had just come to the service of the plaintiff; that he had had no experience in the rendering of bills for Government transportation; that as soon as he learned the custom with reference thereto he rendered bills for transportation of the character here involved at land-grant rates and continued to do so during all of said period. The rendering of the bill referred to at commercial rates, if in fact he so rendered it, was due to his ignorance of established practice and not because of any intention to question the propriety of the practice or to claim as a matter of right the application of commercial rates. It is not shown that at any time during this entire period he ever questioned the application of land-grant rates to such transportation or protested any settlements on that account, but all bills rendered by him, except as stated, were rendered at land-grant rates, and when so rendered he did not expect any further compensation and never expected compensation at other than land-grant rates until after the decision of the Chicago, Milwaukee and St. Paul case by this court.

The difference between the amounts claimed by the plaintiff and said on account of said transportation during said period and the

amount it would have received had it claimed and been paid full commercial rates without land-grant deduction is $5,760.89.

XIV.

Between the 18th day of March, 1915, and the 1st day of August, 1916, the plaintiff, at the request of the United States as shipper or consignor, received from other railroad companies at connecting points, on Government bills of lading and transported over its lines aforesaid, effects and property of various officers of the United States Army; and the claimant, as the last or delivering carrier, was entitled to payment for all of such transportation at the regular published tariff rates applicable. Nevertheless, the Government disbursing and accounting officers allowed and issued warrants for net amounts after making land-grant deductions, although the claimant's auditor or agent, being then advised of the decision of this court in the case of the Chicago, Milwaukee and St. Paul Railway Company, submitted in each of such cases a voucher wherein the full published tariff rate and charge was stated as the amount due and payable, and such warrants were by the claimant accepted under protest, or a voucher showing land-grant deduction was submitted, with the endorsement "stated at net cash rate under protest." And the amounts so deducted and withheld on all of said shipments mentioned in this paragraph, amounting in the aggregate to $851.78, still remain due and unpaid.

20 *Conclusion of Law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $851.78, as shown in Finding XVII. It is therefore adjudged and ordered by the court that the plaintiff recover of and from the United States the sum of eight hundred and fifty-one dollars and seventy-eight cents ($851.78).

The petition as to the other amounts claimed is dismissed.

On the authority of the decision in the Denver and Rio Grande Railroad Company v. United States, No. 33301, decided this date.

V. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 7th day of May, A. D., 1919, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the claimant, and do order, adjudge and decree that The Western Pacific Railroad Company, as aforesaid, is entitled to recover and shall have and recover of and from the United States, the sum of Eight Hundred and Fifty-one Dollars and Seventy-eight cents ($851.78), on the authority of the decision in the Denver and Rio Grande Railroad Company v. United States, No. 33301, decided this date.

BY THE COURT.

21 VI. *Opinion of the Court, by Hay, J., Entered May 5, 1919, in the Case of The Denver & Rio Grande R. R. Co., No. 33301.*

Opinion.

HAY, *Judge*, delivered the opinion of the court:

This is a suit for the recovery of $2,854.98 alleged to be due the plaintiff by the defendants, which amount is in addition to the amount paid the plaintiff on account of items of freight transportation furnished to and paid for by the United States. All the payments were made by disbursing officers on vouchers certified to be correct and presented to them by the plaintiff. The plaintiff now seeks to recover the difference between the amounts thus claimed and paid and the amount the plaintiff would have received had payment been claimed and made at commercial rates without any deductions on account of land grant, the plaintiff asserting that the property transported was not the property of the United States, and therefore not subject to land-grant deductions, the property being the effects of Army officers. In effect, the plaintiff, after it had been paid what it claimed was due it, now asserts that it did not claim enough for the service rendered; that it ought to have claimed the above amount in addition to what it did claim; that it was misled by certain decisions of the Comptroller of the Treasury; that it made a mistake in claiming only the amount which it did claim, and that the defendants were responsible for that mistake, which should now be rectified by this court.

The case is clearly within the holding of this court in Baltimore & Ohio Railroad Co. v. United States, 52 C. Cls. 468, and Oregon-Washington Railway & Navigation v. The United States, this day decided, except as to one item of the above claim, which will be dealt with later in this opinion.

The claim that the plaintiff was misled by the decisions of the Comptroller, and was thereby prevented from demanding what was due it, can not be entertained. Ignorance of the law is no excuse. And it is hardly conceivable that the plaintiff, which at all times has in its employment the best legal talent, could have been misled in a matter of this sort, or could have been ignorant of its rights in the premises. It must have agreed with the Comptroller in his interpretation of the statutes; and certainly for many years it continued to present and certify its vouchers, claiming amounts which were paid by the defendants, and not expecting to receive any amount in addition thereto. As was said in Baltimore & Ohio Railroad Co., supra, p. 473: "Indeed, we may well know that if there had been any protest on the part of the railroad company against this basis of settlement, or any claim for payment at a higher rate, the transactions would otherwise have presented themselves. If a quartermaster refused payment on a basis thought to be correct by the railroad company, it was always its right to file a claim with the auditor, and upon adverse action by him, to appeal to the Comp-

troller of the Treasury." To which may be added that if it was not satisfied with the action of the Comptroller it had the right to bring its claim to this court for adjudication. It is unconceivable that the plaintiff should have been ignorant of its rights as above set out, and the only explanation of its action is that it did not believe that it was receiving for its services anything less than it was entitled to. But if the interpretation of the Comptroller was wrong, and the plaintiff acquiesced in that interpretation, can it now in this court make a claim for the additional amount, which it has never before claimed? Is it not subject to the usual rule as to mistakes of law? We think it is, and as that rule is fully discussed in Baltimore & Ohio Railroad Co., supra, 482, it is not necessary to discuss it here.

The petition of the plaintiff must be dismissed as to all of the amount sued for except the amount of $64.31, set out in Finding XIX. This amount was disallowed by the auditor after it had been claimed, and should not have been deducted, as the property transported was not Government property, and land-grant deductions should not have been made from the amount claimed.

22 VII. *Proceedings After Entry of Judgment.*

On June 6, 1919, the claimant filed a motion for additional findings of fact. On June 28, 1919, this motion was allowed in part and overruled in part and Finding XI amended, as appears on page 18 of this record.

VIII. *Claimant's Application for, and Allowance of, an Appeal.*

Comes now the claimant, by its attorneys, and notes an appeal to the Supreme Court of the United States from the judgment in the above entitled cause and, showing to the court that more than $3,000.00 is involved therein, prays the court to allow its said appeal and certify the record to the Supreme Court of the United States.

CLARK, PRENTISS & CLARK,
Attorneys for Claimant.

Filed June 6, 1919.

Ordered: That the above appeal be allowed as prayed for.
EDWARD K. CAMPBELL,
Chief Justice.

June 30, 1919.

23 Court of Claims.

No. 33678.

THE WESTERN PACIFIC RAILROAD COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact (as amended) and conclusion of law; of the judgment of the court; of the opinion of the court by Hay, J., in the case of The Denver & Rio Grande Railroad Company, No. 33391; of the claimant's application for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this First day of July, A. D., 1919.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 27190. Court of Claims. Term No. 435. The Western Pacific Railroad Company, appellant, vs. The United States. Filed July 3d, 1919. File No. 27190.